

Claim Rejections - 35 USC § 112

Claims 1-2,4-6 and 8-10,are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 "all external dimensions of the support being less than 100 microns" is not clear if Applicant intends the external surface area is less than 100 microns [e.g. L (X) W (X) H] or some other combination of external dimensions. The specification teaches on pages 3-4 lines 25-4 respectively label 100 microns long, 10 microns wide and 1 micron thick. It appears this is the only example/teaching of the dimensions of the micro-label in the original specification. This example does not teach all of the dimensions are less than 100 microns, but rather only two dimension less than 100 microns.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohr (USP 5,445,970) in view of Burrell et al. (USP 5,124,172).

Rohr teaches a binding assay using a magnetic particle as a label. Column 10 lines 14-28 teach the various metals that can be used for the label which include aluminum. Column 12 lines 56-65 teach the magnetic particle can be in the shape of plates, rods or bars which have been read on the claimed "substantially planar or linear shape." Rohr also teaches the diameters of the magnetic particles are between 0.01-

1,000 microns which teach dimensions that meet the claimed "all external dimension of the support being less than 100 microns."

Rohr is silent to the surface of the magnetic particles being an anodized metal and more specifically anodized aluminum.

Burrell et al. teach in their abstract and in column 2 lines 20-43 that a porous aluminum oxide film is advantageous because it provides high sensitivity. The aluminum film is advantageously formed by anodization because it is "... an inexpensive process with precise thickness control for high reproducibility and uniformity."

It would have been within the skill of the art to modify Rohr in view of Burrell et al. and anodized surface of the aluminum particles taught by Rohr to gain the advantages above taught by Burrell et al.

The Office has read the limitations of claim 10 "... a series of holes in the plate" on the taught pores on the surface.

Response to Arguments

Applicant's arguments with respect to claims 1-2 and 4-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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